



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2013-0698

RIN 1625-AA00

Safety Zone; Port of Galveston, Pelican Island Bridge Repair

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone in Galveston to maintain public safety during the Pelican Island Bridge Repair Project. This action is necessary to protect public boaters and their vessels from potential safety hazards. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port of Houston-Galveston or a designated representative.

DATES: This rule is effective from October 1, 2013 to December 15, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0698. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Xochitl Castaneda, Chief of Waterways Management Division, U.S. Coast Guard Sector Houston Galveston; telephone (713)671-5164, e-mail [Xochitl.L.Castaneda@uscg.mil](mailto:Xochitl.L.Castaneda@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

BNTM	Broadcast Notice to Mariners
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

#### A. Regulatory History and Information

The Coast Guard is issuing this Temporary Final Rule (TFR) without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because publishing an NPRM and delaying the rule's effective date would be contrary to public interest. The Coast Guard was notified about this repair project on April 14, 2013 therefore there was not enough time to publish an NPRM. During the repair project, a crane and barge will be placed under the Pelican Island Bridge; therefore immediate action is needed to protect public boaters and their vessels from potential hazards associated with this repair work.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

#### B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295,

116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones. The purpose of this safety zone is to protect public boaters and their vessels from potential safety hazards associated with the repair of the Pelican Island Bridge.

#### C. Discussion of the Final Rule

The Coast Guard is establishing a temporary Safety Zone in Galveston Channel to ensure public safety during the Pelican Island Bridge Repair Project. This area includes all waters of Galveston Channel under and around the Pelican Island Bridge, enclosed within the area extending 50 feet out from position 29°18'38.23"N, 094°49'24.84W. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port of Houston-Galveston or a designated representative from October 1, 2013 to December 15, 2015.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and

Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS) because this regulation will only be enforced from October 1, 2013 to December 15, 2015. Notifications to the marine community will be made through Vessel Traffic Services and Broadcast Notice to Mariners. The impacts on routine navigation are expected to be minimal.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities,

some of which might be small entities: vessels intending to transit or anchor in the Galveston Channel from October 1, 2013 to December 15, 2015. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) vessels are able to transit around the affected area; (2) vessels may request permission from the Captain of the Port to transit through the safety zone; and (3) the number of vessels affected by the safety zone is expected to be minimal.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the

Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments



This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone in the Galveston Channel to

maintain public safety during the Pelican Island Bridge Repair Project. This action is necessary to protect public boaters and their vessels. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0698 is added to read as follows:

§ 165.T08-0698 Safety Zone; Port of Galveston, Pelican Island Bridge Repair.

(a) Definition. As used in this section, Public boaters means all recreational boaters and their vessels.

(b) Safety Zone. This area includes all waters of Galveston Channel enclosed within an area extending 50 feet out from the position 29°18'38.23"N, 094°49'24.84"W. All coordinates are based on NAD83.

(c) Effective date. This rule is effective and will be enforced from October 1, 2013 to December 15, 2015.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all vessels except participant vessels and those vessels specifically authorized by the Captain of the Port, Houston-Galveston or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Houston-Galveston, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (713) 671-5103.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Houston-Galveston, designated representatives and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the U.S. Coast Guard.

Dated: September 23, 2013

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B.K. Penoyer  
CAPT, U.S. Coast Guard  
Captain of the Port Houston-Galveston

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